



State of Utah

GARY R. HERBERT
Governor
GREG BELL
Lieutenant Governor
NEAL T. GOOCH
Insurance Commissioner

State of Utah
Title and Escrow Commission Meeting
Meeting Information

Date: **January 9, 2012**

Time: **9:00 AM**

Place: East Bldg, **Spruce** Room

MEMBERS

Commission Members

Chair, Dirk Keyes
Co Chair, Cortlund G. Ashton, Salt Lake Cnty
Kirk Donald Smith, Weber Cnty

Jerry M. Houghton, *Tooele Cnty*
Larry Turner Blake, *Washington, Cnty*

Department Staff

Perri Babalis, *AG Counsel*
Green-Wright, *MC Dir.*
Jilene Whitby, *PIO Recorder*

Brett Barratt, *Deputy Comm.*

Mark Kleinfeld, *ALJ*
Suzette
Tammy Greening, *Examiner*

Public

David Moore
Carol Yamamoto
Lincoln Scoffield
Al Newman

Pete Stevens
Susan Houghton
James Seaman

Rod Newman
BradyHemm
Clayton Hansen

NON-APPROVED

MINUTES

General Session: (Open to the Public)

- **Welcome** / Dirk Keyes, Chair, 9:02am
- **Adopt Minutes of Previous Meeting**
 - **Motion** by Cort to accept the minutes, seconded by Larry, vote was unanimous.
 - Cort made a **motion** to move to Executive Session, seconded by Jerry and the vote was unanimous. Members of the public and department were excused at 9:05am

Executive Session – (Closed to the Public)

General Session

- **Reports**
 - **Concur with Licensee Report / Tammy**
Motion by Kirk to concur, seconded by Cort and vote was unanimous.
 - **Concur with Complaint & Enforcement Reports / Suzette**
Cort asked why 59903 on the Closed Investigations said “No jurisdiction.” Tammy did not know, but assumed the person was not an insurance licensee.
Jerry made the **motion** to concur, Larry seconded it and the vote was unanimous.
 - **Request for Attorney Exemption:** None
- **Administrative Proceedings Action**
 - **Stipulation & Order / ALJ**
 - **LSI Title Insurance Agency of Utah, Inc., Commission asked for Guidance from Legal Counsel**
Dirk reviewed the advice given to them by their counsel as per Rule R592-2-7(2), that Commission must impose a penalty based on the Stipulation and the information therein. Cort suggested they consider imposing a penalty based upon unlicensed activity assumed to have occurred in the two year period noted in the Stipulation.
 - Cort made a **motion** to impose a \$250,000 penalty and send it back to the Commissioner for concurrence, Larry seconded it.

- Discussion: Pete wanted to see a code citation requiring a policy be signed by a Utah licensed agent and referred to another similar case where a similar violation was fined \$1500. Very different from the penalty proposed now. He said the code did not require escrow to be done in Utah.
- Vote was unanimous in favor of Cort's motion.
- Judge Kleinfield left the room while LSI was discussed.
- **Liberty Title West, LLC / Mark Kleinfield**
 - Judge Kleinfield said the findings were the result of an audit done August 31, 2011. The department found the organization's full name was not on signs, business cards and that a producer's license had lapsed. Four closings were done while the producer was not licensed. Upon learning of these violations the agency took immediate corrective action. Proposed forfeiture is \$5000 with 12 month probation. The agency provided a business plan for the timely renewal of agency licenses. Kirk asked if the owner or manager had the minimum licensing requirements? Tammy said she has an attorney exemption.
 - **Motion** by Kirk to approve the Stipulation, seconded by Jerry and the vote was unanimous.
- **Old Business**
 - **Discuss Definition of Real Estate Escrow Settlements & Real Estate Closings / Cort**
Pending. Brett said the Rulemaking Committee still had not scheduled a hearing regarding the rule required. Keep on agenda for next month.
 - **Discussion & Vote to Decide Whether Title & Escrow Commission Should Provide a Position Statement Re: Report from the "Advisory Council on Optimizing & Streamlining State Government."**
Jerry drafted a letter to go to the Governor. Cort **moved** to send it. Larry suggested Commission members sign it, seconded by Kirk and the vote was unanimous.
 - **Lt Governor's Response RE: Notary Issue / Cort**
Take off agenda.
- **New Business**
 - **Discussion of "Agency Supervision by Qualifying Owner or Manager Rule" / Dirk**
Sample language of the proposed rule was included in packets provided to attendees. Rule establishes experience guidelines for those applying for an agency license.
 - Cort said the rule is not inconsistent with what federal requirements. A mortgage broker has a PLM at each branch. This language suggests one PLM with three years experience at each company. Section 4(1)(b) says the license shall be designated to one entity. It was suggested that it might be helpful to allow a person to be affiliated with more than one entity.
 - Al asked if this wording would allow for more than one designee per company.
 - Cort said each company or entity should have one person to look to regarding licensing.
 - Al said the purpose of the rule is to stop multiple licensees from doing something where they are not associated. Here you are saying the qualified owner can't be the licensee. Doesn't make sense.
 - David suggested the option of going to the Commission for an exemption when they have an agency that is not functioning. A person suggested adding ownership and control language.
 - Cort made a **motion** to move forward in the rulemaking process and take public comment, seconded by Larry. Perri said the rule format was fine and asked if they were happy with the language? They wanted public comment before issuing final draft. Add link to wording in agenda put on the web and provide a link to email comments.
 - **Rule Defining "Minimum Mandatory Search for a Real Estate Transaction" / Cort**
Cort suggested writing a rule with minimum search standards.

- Clayton noted that procedures specify who can sign. Underwriters don't need minimum requirements because they are probably doing better. We don't need a rule about who should sign. That is determined by contract. Perri said the statute assumes a licensed person does the search.
- Clayton said they have minimum search requirements. If search goes to a third party we require they be licensed as searcher and comply with certain standards. Al agreed. This is how he trains people. If we are required to have a license before doing a search then we might have a problem. No unlicensed people are allowed to sign.
- Brett asked what problem this code change was trying to solve. Jerry said it was to help the department know what needs to be done during a search and to set minimum search standards. Brett wanted to know if a search was done by an unlicensed producer would there be a minimum standard?
- Clayton said a search should be done under the direction of a licensed producer and that the underwriter is ultimately responsible for shoddy work and correcting it. Kirk noted that all learn how to search during an apprentice period after which they receive a title license. Minimum standards are to protect the public.
- Tammy noted that the bail bond business requires licensees to have 2000 hour experience before being licensed.
- Cort suggested they move forward with a rule that would defer to the underwriter for their minim search standards, incorporate some elements of licensing requirements, and require that the final commitment be signed by a producer with title licensing authority. Rule should include a reference to the penalty section of the code.
- Perri noted that the 2000 hour bail bond experience requirement was for an agency not a producer. She also said Subsection 31A-20-110(2) says that no policy is to be issued except by a producer.
- Cort suggested naming the rule, "Search and Exam Standards."
- Glen suggested not defining minimum search standard. He had proposed language. Cort expressed concern that the wording was not specific and could not be enforced.
- David said Section 31A-20-110 is what the industry has used to determine what a reasonable search examination is. Matt did not think the rule should establish what minimums were. Both Al and Matt liked Glen's wording. Jeff sent Glen's wording to Cort, Larry and Jerry electronically.
- Leave on agenda.
- Perri will critique language. Commission will add signature language to Glen's wording.
- Larry expressed concern regarding insurance and certification documents they were being required to sign. He shared two samples. Jerry said Freddy Mack and others have similar language. David said it was in violation of Bulletin 2010-8. He suggested changing the bulletin or writing a rule. Tammy said anyone signing such documents was acting as an insured and would be acting beyond their authority.
 - Put on agenda for next month. The department was asked to review this issue and determine direction that should be taken.
- **Other Business:** None
- **Adjourned:** At 11:20am Kirk made a **motion** to adjourn, seconded by Jerry and the vote was unanimous.
- **Next Meeting:** February 13, 2012, Spruce Room

2012 Meetings in Spruce Room

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